

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 4928 of 2013

Date of decision : 12.02.2016

Prahlad and ors.

...Petitioners

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shalender Mohan, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G, Haryana

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

The present petition under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing respondent No. 2 to implement order dated 06.12.2002 (P-5) vide which the case of the petitioners had been considered for regularization but till date, services of the petitioners have not been regularized.

Brief facts of the case are that petitioner No. 1 and 4 were appointed as Sweepers on 23.03.1976 and 01.09.1992 respectively and petitioner No. 2 and 3 were appointed as Water Carrier on

01.08.1993 and 07.07.1994 with the respondent and policy dated 07.03.1996 for regularizing the services of part time employee/daily wagers was introduced, which was subsequently modified vide order dated 18.03.1996.

Subsequently, petitioners approached this Court by way of filing CWP No. 1447 of 1993 which was disposed of on 15.02.1999 with a direction to the respondents to decide the representation of the petitioners, within a period of three months, which was decided against the petitioners.

Thereafter, petitioners filed CWP No. 17734 of 1999 titled as Parhlad Singh and others vs State of Haryana and others, under which the policy dated 01.02.1999 was challenged and this Court disposed of the petition on 08.11.2011 with the observation that requirement through employment exchange cannot be made applicable and direction was issued to the respondents to decide the representation of the petitioners after reconsidering their case in view of the latest situation of the facts and law, within four months from the date of receipt of certified copy of this order (P-1).

S.L.P was filed against the above said order, which was also dismissed (P-2). Thereafter, petitioners served legal notice (P-3) but no decision had been taken by the respondents and contempt petition No. 446 of 2012 was filed and petitioners came to know that respondents

have passed order dated 07.12.2012 in view of order dated 08.11.2011 and framed a policy on 17.10.2002 and contempt petition was dismissed on 24.05.2011 (P-4).

The claim of the petitioner was then rejected vide order dated 07.12.2002 and now the petitioners are seeking regularization of their services under the policy dated 01.02.1999 and 17.12.2002, which has not been implemented till date.

On notice, reply has been filed on behalf of respondent Nos. 2 to 5 taking a stand that the case of the petitioners for regularization of their services, was forwarded vide letter dated 11.10.2013 to DGP Haryana Panchkula, who after going through the relevant record of the petitioners and after going through the notification dated 29.07.2011, found that petitioner Nos. 1, 2 and 4 do not fulfill the conditions mentioned at Sr No. (ii) and (iii) of the above notification and petitioner No. 4 does not fulfill the condition mentioned at Sr. No. (iii) of the above notification and their case was thus rejected. The condition at Sr. NO. ii and iii of notification dated 29.07.2011 reads as under:-

(ii) *That the employee/worker possessed the minimum prescribed qualifications for the post on the date of appointment/engagement.*

(iii) *That the concerned employee should have been appointed*

only after either his name has been sponsored by the Employment Exchange or has been appointed/engaged on the basis of recommendations made by the Departmental Selection Committee by inviting applications through advertisement against duly sanctioned vacant post.”

Further a stand has been taken that Government of Haryana has framed the policies only for regularization of service as whole time class IV employees and not for part time contingent paid class IV employees. Further it has been stated that the respondents have not regularised the services of any person junior to the petitioners.

Heard learned counsel for the parties.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Dharam Pal v. State of Haryana and others, 2002(3) SCT 644*** whereby petitioners were working as part timers since 1987 and were seeking regularisation of their services by relying upon government's policy to regularise services of Class IV employees. The writ petition was allowed and it was held that since the petitioners were working continuously for the last 15 years, the Government is not justified in denying them regularisation.

Thus, the respondents cannot take a stand that no posts are available with them, as the petitioners have been working with the respondents for the last about 15 years.

Reference at this stage can further be made to a judgment of a Division Bench of this Court in a case of ***Umed Singh vs. State of Haryana and others, 2001(1) RSJ 752*** wherein it has been held that after 10 years, the petitioners in the case cited above were considered to be eligible for regularisation. It is pertinent to note that the petitioners are also claiming that the expression “part time” does not indicate with regard to nature of their work and the time spent by them in the schools. According to them they are working for the entire day in the school and performing their functions and duties assigned to them by the Administration. It is specifically disputed that they work only for an hour or two in a day. It is contended that there are nursery schools where small children are studying. Thus, the cleaning process of the class rooms etc is carried out for the hours during which the school is run.”

The writ petition was allowed and the following direction was issued:-

(i) *The case of the petitioners for regularisation as par time employees would be considered by the State within a period of six months in the light of its policy dated 30.12.1995/25.02.1999.*

(ii) *The claim of the petitioners would not be declined on the ground that they do not possess the essential*

qualification as stipulated in the said policy as per the statement made in the court by Mr. Amol Rattan, learned Assistant Advocate General upon the instructions of the State.

(iii) The State shall appoint the Sub Committee headed by an officer not below the rank of Under Secretary to Government of State to examine the building, infrastructure, staff and number of children studying in every school of the State of Haryana and in the light of that to recommend how many regular posts can be created in every school depending on the work and the strength of the employees and students. The committee shall consider the availability of the posts as and when it became available/vacant in a particular school to identify the total number of posts which can be filled up as of now, under the policy of the Government.

(iv) We also consider it appropriate that the Committee afore-stated shall hear the part time employees in a representative capacity before determining the criteria to implement the order.”

The above said judgment is directly applicable to the facts of the present case, as in the present case, the case of the petitioner for regularisation of their services had been declined on two grounds i.e non availability of posts and with regard to qualification, which have

been taken care of in the above mentioned judgments.

Reference at this stage can further be made to a judgment of this Court in a case of ***Budho Devi v. State of Haryana, 2015 (3) LLJ 447*** whereby this Court directed the respondents to regularise the services of the appellant as he had served the department for almost 31 years. The respondents have rejected the case of the appellant on the ground that she did not fulfil the condition of eligibility. Reference has been made to the judgment of ***Dharam Pal v. State of Haryana and others, 2002(3) SCT 644***.

Applying the ratio of the above mentioned judgments, the writ petition is allowed and respondents are directed to regularise the service of the petitioners, pursuant to policy (P-7). The lack of education qualifications or age should not come in their way. The above said exercise shall be completed within a period of three months from the date of receipt of certified copy of this order. Thereafter, a compliance report be sent to this Court.

(RITU BAHRI)
JUDGE

12.02.2016

G Arora